S.B.CRIMINAL MISC. PETITION NO.1653/2006
(Ram Singh Vs. State of Raj. & Anr.)

Date of order : : 08.05.2007

HON'BLE MR. KRISHAN KUMAR ACHARYA, J.

Mr.Shambhoo Singh, for the petitioner.
Mr.Ashok Upadhyay, PP for the State.
Mr.Parikshit Nayak, for the respondent No.2

Heard learned counsel for the petitioner as well as learned Public Prosecutor for the State assisted by learned counsel for the complainant-respondent.

Learned Judicial Magistrate, First Class, Gaddi District Banswara vide its order dated 15.10.2004 has taken cognizance against the petitioner for offence under Section 279, 337, 338 IPC and Section 134, 177 of the Motor Vehicles Act.

The main contention of learned counsel for the petitioner is that the police after investigation filed FR in this case. The matter was again sent for re-investigation and after investigation also, FR was given. Learned Magistrate after

recording the statement of complainant Smt.Tulsi and AW-2 Hadmat Singh has taken cognizance against the petitioner for the aforesaid offences. There is no identification of the accused nor any evidence has come on record to connect the petitioner with the alleged crime. It was found in the police investigation that petitioner was on duty at the time of alleged incident. Learned Magistrate has not considered the grounds of FR and only on the basis of statements of Tulsi and Hadmat Singh has taken cognizance against the petitioner.

Learned Public Prosecutor and learned counsel for the complainant have supported the order of learned Magistrate taking cognizance and states that it does not require any interference.

I have considered the rival arguments advanced by learned counsel for the parties and also gone through the order dated 15.10.2004 passed by learned Judicial Magistrate, First Class, Gaddi District Banswara. The police after investigation filed FR in this case.No evidence was found regarding the owner of the motor-cycle. The matter was sent for re-investigation and after

investigation also, the police had given FR. Thereafter, the protest petition was filed by the complainant and the statement of complainant and and Hadmat Singh were recorded. Learned Magistrate has taken cognizance against the petitioner on the basis of these statements. Learned Magistrate has not considered the material collected during the investigation in true perspective. Looking to all the facts and circumstances of the case, since learned Magistrate has not considered the grounds of the FR nor enquired the matter further, therefore, in my considered opinion, the matter requires further enquiry by the learned Magistrate.

In this view of the matter, the order dated 15.10.2004 passed by learned Judicial Magistrate, First Class, Gaddi, District Banswara is set aside and the matter is remanded back to the trial court with a direction that learned Magistrate shall further enquire the matter and after recording the evidence, if any, lead by the complainant and considering the grounds of FR as well as evidence collected during investigation, pass afresh order in accordance with the law. The complainant may appear before the trial court on 30.5.2007.

With the aforesaid observations and directions, this misc. petition is disposed of.

(KRISHAN KUMAR ACHARYA), J.

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